Supreme Court of the United States

OCTOBER TERM, 1946.

No. 34.

GEORGE HARRIS, *Petitioner*,

v.

THE UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR REHEARING.

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To the Honorable Fred N. Vinson, Chief Justice of the United States, and the Associate Justices of the United States:

The petition of George Harris respectfully submits that he has been aggrieved by an opinion of the majority of your Honors rendered herein on the 5th day of May 1947 in the respects hereinafter set forth and prays for a rehearing of said matter. Your petitioner incorporates said opinions herein by reference. This Petition for Rehearing is filed within twenty-five days after the entry of judgment herein.

I

Petitioner's counsel realizes the entire Court has considered every case and precedent heretofore considered by

the Supreme Court of the United States, either in the opinion of the majority or the opinions of dissent. The majority of the Court seeks to justify their conclusion on certain citations of other decisions that we feel are not applicable. The majority opinion leans heavily on the majority opinion in the case of *Davis v. United States*, 328 U. S. 582. The basis of the Davis holding is substantially that the Trial Court held that the defendant therein was persuaded to turn the questionable evidence over to some officers and therefore consented to the search and seizure. There were questions of facts involved in the Davis case that were not in the Harris case. The facts in the Davis case were disputed. In the Harris case, there is no dispute as to the facts; the petitioner was handcuffed, in his own apartment, at the point of a gun, his apartment ransacked from top to bottom and his sealed envelopes opened, contents seized, confiscated and appropriated to the use of the Government in the subsequent prosecution.

The majority opinion simply arrives at the conclusion that Harris was guilty of possessing some blank draft cards that belonged to the Government. Nothing is said about whose property the sealed envelopes were.

For to say the possession of these worthless blank draft cards, with no intrinsic value, is the commission of a continuing crime in the presence of the investigators, is to carry a principle of criminal law to a greater extent than this Court has ever gone. It is fundamental and elementary that criminal laws are strictly construed. This Court has so announced in many cases that are all too familiar to this Court as to call for such citations.

The documents under discussion were seized without consent and under no legal process. This Court cannot say that they were taken incident to a lawful arrest, for the crime charged in the warrant as issued by the United States Commissioner at Oklahoma City. The papers taken were not the fruits of the crime for which Harris was arrested nor were they the means for the commission of the crime for which his home was raided.

If the Harris conviction is to stand, this Court should, after a future hearing, in a future opinion, definitely and candidly, overrule and set aside its decisions in the case of *Go-Bart Co. v. United States*, 282 U. S. 344 and *U. S. v. Lefkowitz*, 285 U. S. 452, in order that the precedents be consistent and inferior courts be properly guided, thereby laying down a rule of law that every Federal Bureau of Investigation agent having a warrant of arrest, in executing that warrant of arrest, may enter a man's home, make an exhaustive search and obtain anything that might be the basis of a criminal charge.

The Court, for future guidance, should definitely state that under the Fourth Amendment to the Constitution, the right to search and seize is as great or greater than under a legally issued search warrant; and the right to search and seize is, without restriction or restraint upon arresting officers with a warrant of arrest, valid under the Fourth Amendment.

One significant fact of the arrest in the Harris case was that it was made by five Federal Bureau of Investigation agents, not by the regularly appointed United States Marshal or his deputies, who make 99% of arrests when warrants are issued. Five agents to arrest one man, no, five agents to tear up a home to see what they may find, without one cent of financial responsibility for their actions. All in the name of law and order. Today it is Harris' home; tomorrow it may be your home and mine.

A search warrant could have been obtained. The law could have been observed and the majority of this Court would not have been obliged to temporize the fundamental law of this land to bring about the incarceration of one individual, as did the United States Circuit Court of Appeals for the 10th Circuit. We cannot go on singing "How Firm the Foundation" when crevices large enough for the masses to fall through are made by uncertain decisions. The Fourth Amendment to the Constitution is either permanent or not permanent. The majority opinion temporizes a cer-

tain state of facts; to the world that individual may not be so important, but to the citizens as a whole the sanctity of the home is what the founders of this Country fought, bled and died for, and the same brand of people, when a Government becomes oppressive, will do so again.

A young graduate lawyer Federal Bureau of Investigation Agent may feel free and unrestrained in his actions in making an arrest and investigation under the facts set out in the majority opinion, to say nothing of the uninformed average city police officer, who, in raiding the premises of citizens, could maliciously and unsuspectingly place contraband in the home of anyone raided, be it a blank draft registration card, a counterfeit dollar bill, morphine without the container having affixed thereon a stamp tax, non-tax-paid whiskey and a thousand other items all too familiar to anyone who has been in a law enforcement agency, who would be inclined to search and seize with a vengeance.

The majority opinion in its conclusions states, "The danger to fundamental personal rights and interests resulting from excesses of law-enforcement officials committed during the course of criminal investigations are not illusionary. This Court has always been alert to protect against such abuse." In other words, citizens are advised, "Don't cross the bridge until you come to it", which was good advice in the School of Salerno. Does this mean that in each instance a citizen whose home as been invaded must run the gauntlet through the United States Commissioner's Court, the United States District Court, the United States Circuit Court of Appeals and then to the Supreme Court of the United States, before he gets the conclusive answer as to what rights he has under the Fourth Amendment to the Constitution? We, who are familiar with the intricacies of such endeavor, would rather say, "Hold the fleet angel fast until he bless thee."

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall

not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The law as laid down in the Harris case is prejudicial to the rights of every citizen; and the Constitution in an important age-old amendment has been temporized to a degree of invalidating that Amendment. It has been said, "The injustice to an individual is sometimes of service to the public. Facts are apt to alarm us more than the most dangerous principle".

On such excursions by the investigators under discussion and the facts set out in the opinions of this Honorable Court and if such invasions by officers are to be permitted, the Constitution is openly invaded, the primary rights of the citizens, from which all laws derive their authority, is directly attacked, and should not be passed unobserved.

It is commonly quoted, "Eternal vigilance is the price of liberty," but the quotation in full is: "It is the common fate of the indolent to see their rights become a prey to the active. The conditions upon which God hath given liberty to man is eternal vigilance; which condition, if he break, servitude is at once the consequence of his crime and the punishment of his guilt". As quoted from The Letters of Junius, "One precedent creates another. They soon accumulate and constitute the law. What yesterday was fact, today is doctrine".

II

Your petitioner respectfully urges that a rehearing be granted, for beyond any reason of a doubt, the majority opinion gives the greatest inroad, of any opinion handed down by the Supreme Court of the United States, to an invasion of the protective features of the Fourth Amendment. The majority opinion is correct if they were simply passing upon a question of fact if Harris were guilty of possessing some blank draft cards, regardless if he pos-

sessed them with intent to unlawfully use the same. But we must consider the means of attaining that conclusion. They are too serious to the future of all citizens. The lower courts might be considered, "Blind guides, which strain at a gnat, and swallow a camel".

In the case of *Byars v. United States*, 273 U. S. 28, 33, this Court stated:

> "The Fourth Amendment was adopted in view of long misuse of power in the matter of searches and seizures both in England and the colonies; and the assurance against any revival of it, so carefully embodied in the fundamental law, is not to be impaired by judicial sanction of equivocal methods, which, regarded superficially, may seem to escape the challenge of illegality but which, in reality, strike at the substance of the constitutional right."

Wherefore, and for the above reasons, and further reasons to be argued orally, your petitioner respectfully urges that a rehearing may be granted, and that this Court allow a reargument, and that the judgment of this Court may be stayed pending the disposition of this petition.

Respectfully submitted,

Roy St. Lewis,
Herbert K. Hyde,
Counsel for Petitioner.

I, Roy St. Lewis, an attorney regularly admitted to practice in the Supreme Court of the United States, do certify that in my opinion the foregoing petition for rehearing in the case of *Harris v. United States*, No. 34, is well founded and is not presented for the purpose of creating a delay.

Roy St. Lewis.

May 23, 1947.